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REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN CONCERNED

Written statement submitted by the International Federation Terre des Hommes, a non-governmental organization in consultative status (category II)

The Secretary-General has received the following communication which is distributed in accordance with Economic and Social Council resolution 1296 (XLIV).

[18 August 1993]

Impunity

1. The International Federation Terre des Hommes, deeply concerned by the difficulty of ensuring respect for the rights of each and every individual and community, considers it imperative to address the phenomenon of impunity that prevails in many countries. Although the governments of such countries proclaim themselves to be democratic and bound by the rule of law, the persistence of impunity is an attack on their peoples, both adults and children, and a violation of the conscience of humankind.

2. Impunity is not an abstract idea but a real evil, which results in past and present crimes against humanity going untried. These crimes will be repeated unless the international community turns from its attitude of silent complaisance, or its timid and selective action, in such cases. Such attitudes may be observed in particular in developed countries and reflect the interests of industrial powers. Impunity must be countered in order to prevent the continuing occurrence of tragedies resulting from gross and flagrant violations, inter alia, in the economic, social and cultural fields.

3. The case of impunity in Latin America seems to us to be particularly serious, because it often takes on a tragic dimension. At the time of decolonization, institutions were set up in the region on the basis of the political philosophy prevailing in Europe at the time. The independent States were founded on legal principles involving a tripartite division of public authority and respect for civil and political rights. Internal contradictions nevertheless weakened the legal structures, and most countries in the region have endured bloody dictatorships or civil wars resulting from the choices imposed by military leaders or from unjust social and economic structures, and often from both. In other countries there have been weak democracies, with effective repression on the part of State security organs serving to maintain control.

4. In recent years, with the transition towards more democratic structures resulting from major reforms presaging new rules for social coexistence and justice throughout the continent there has been some hope of an improvement in the situation. Yet the former democracies that have been remodelled, and the newly-emergent democracies, have not always been able to ensure the legitimacy of their legal systems for lack of effective guarantees of respect and enjoyment of human rights, adequate aid to victims and sanctions and punishment for those responsible for the most serious violations. Today, as in the past, impunity still reflects a tolerance of old and new vices engrained in, inter alia, the military, the police forces and paramilitary groups.

5. The International Federation Terre des Hommes favours all forms of reconciliation that foster a return to lasting peace and dignity, within the minds of individuals and within the community as a whole, arising from involvement in such reconciliation and becoming a source of wellbeing. Yet relative institutional stability must not be bought at the price of the ignominy of silence and crimes overlooked. In many States, murderers still cling to protection and power by means of laws, decrees, conspiratorial omissions or acceptance of active responsibility. All too often, victims do not receive compensation, and even if those who have carried out or instigated crimes are identified, they retain their posts in government service.

6. In Latin America one finds two principal forms of impunity: legalized and de facto. For the first kind of impunity, one may quote pardons and amnesties that have been decreed: Decree-Law No. 2129 of 1978, under which the dictator Pinochet gained an amnesty for himself and for his security forces; in Brazil, Act No. 6683 of 1979 and constitutional abrogation No. 26 of 1985. In Argentina, we have the final document of the military junta of 1983, Act No. 22926 of the same year, Act No. 23943 of 1986, known as the "Final conclusion", and Act No. 23521 of 1987, known under the title "due

obedience". In Uruguay there is Act No. 15848 of 1986, entitled "Act on expiration of the punitive capacity of the State"; in El Salvador, there are Decree No. 805 of 1987 and an amnesty act of 1992, plus the latest one of 1993, adopted following the report of the "Commission on the Truth", which allowed imprisoned persons implicated in the massacre of the Jesuits to go free.

7. One sees de facto impunity in countries that commit gross and large-scale violations of human rights. In his working paper (E/CN.4/Sub.2/1993/10), Mr. Chernichenko designates such violations as international crimes. Here we are referring to countries such as Colombia, Peru and Guatemala. In cases of de facto impunity, governments that tolerate such actions are accomplices, either through commission or through wilful omission, in these crimes. In any State governed by the rule of law, the privilege of military or police justice must be limited solely to internal offences within those services. It is an aberration - indeed, criminally irresponsible - to extend such privileges to serious crimes or crimes against humanity such as the forced disappearance of individuals, summary execution, torture or genocide.

8. The rule of "due obedience" can result in the perpetuation of such abuses. It must never be allowed to apply to violations of basic rights. Military orders are rarely given in writing, and the rank and file is by that very fact at the mercy of superiors. In cases of this kind there is no written record of orders given. Instigators of serious violations may thus be decorated or sent abroad on diplomatic missions. In that connection, we welcome the decision of the German Government to refuse to allow four Colombian military officers implicated in crimes against humanity into the country. Such a reaction is extremely useful for the defence of human rights.

9. Special procedures such as those established under resolutions 1503 (XLVIII) or 1235 (XLII) work slowly and selectively and are no longer adequate to deal with serious violations of human rights, which can be further aggravated if impunity is tolerated and the United Nations protection system does not improve. We recommend more active involvement and intervention on the part of regional and international bodies for the protection of human rights and welcome the decision to study the possibility of reforming or abolishing the confidential procedure under resolution 1503. The responsibility of States for the protection of individuals and peoples goes beyond the national context. The progress report by Mr. Guissé and Mr. Joinet on the question of impunity (E/CN.4/Sub.2/1993/6) is especially welcome. A follow-up report, which would cover serious violations of economic, social and cultural rights as well, is greatly desired by our organization.

10. Penal and disciplinary sanctions for serious violations of human rights cannot be considered to be a form of revenge. They are, rather, an indispensable act of justice to consolidate the credibility of States based on the rule of law. Crimes that go unpunished are repeated, and those who commit them become convinced they will not be punished for their deeds. The struggle against impunity must become a priority for the entire international community. "Commissions on the truth", like the one established in

El Salvador, constitute an important achievement. To break the rule of silence and lies is the first step: punishing the guilty parties is the second.

11. Our organization considers it necessary to establish a commission for the investigation of crimes against humanity and supports the proposal made to that effect by the International League for the Rights and Liberation of Peoples. In the name of all those, including thousands of children and young people, who have endured various forms of severe repression, it is essential to act vigorously on behalf of individuals who at this very moment are being subjected to torture; on behalf of imprisoned or disappeared persons; and in favour of compensation for families of victims of summary execution. The International Federation Terre des Hommes urges the international community to move rapidly and firmly to end impunity. Criminals must not be allowed to stand above the law.